

2013 DRAFTING REQUEST**Bill**

Received:	10/9/2013	Received By:	jkuesel
Wanted:	As time permits	Same as LRB:	
For:	Patricia Strachota (608) 264-8486	By/Representing:	Laura Rose - LCS
May Contact:		Drafter:	jkuesel
Subject:	State Finance - claims agnst st	Addl. Drafters:	phurley
		Extra Copies:	RAC - 1 GMM - 1

Submit via email: YES
Requester's email: Rep.Strachota@legis.wisconsin.gov
Carbon copy (CC) to: laura.rose@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

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Claims by innocent convicted persons

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Jacketed
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/P5		kfollett 11/6/2013	rschluet 11/6/2013		mbarman 11/6/2013		
/1	jkuesel 11/6/2013	kfollett 11/7/2013	rschluet 11/7/2013		srose 11/7/2013	lparisi 11/13/2013	

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NOT
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1/15 Kuesel
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By jkuesel
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183 jkuesel
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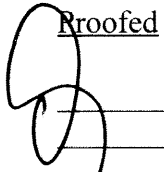
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Per attached E mail, 10/2/13.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
1/1	jkuesel 10/4/13	1/1 SAC 10/09/2013	1/1 SAC 10/9/2013	_____	_____		

FE Sent For:

<END>

Kuesel, Jeffery

To: Rose, Laura
Subject: RE: claims board draft

Laura,

We will take care of your request. I will need to bring in a couple of my colleagues on this draft because we are sweeping beyond ch. 775. We will get back to you if questions arise.

Jeff

From: Rose, Laura
Sent: Wednesday, October 02, 2013 10:15 AM
To: Kuesel, Jeffery
Subject: claims board draft

Hi, Jeff,

I met with Rep. Strachota about the claims board issues. She wants to request a new LRB draft, drafted as a /P1. It would contain the same provisions as LRB 2982/1, with the following additions:

1. Create a definition of imprisonment, and specify that only persons who have been "imprisoned" under that definition are eligible for compensation under s. 775.05. "Imprisonment" would mean confinement in a prison, described in s. 302.01, but it would not include the correctional institution defined under s. 301.046 (1) if the institution is the prisoner's place of residence. Imprisonment would include confinement in a county jail, rehabilitation facility established by s. 59.53 (8) or county house of correction under s. 303.16.

Persons who are wrongfully confined under the Huber law would be eligible for compensation. Persons who are wrongfully convicted and placed on electronic monitoring, or on probation or parole, would not be eligible for compensation.

2. Amend 227.03(5) to delete everything after the word "board".
3. Provide that if a claimant under s. 775.05 dies before the award is made, the claim is extinguished and the funds may not be awarded to the claimant's estate. However, any attorney fees, costs, and disbursements that the claimant incurred in pursuing a successful claim may be reimbursed by the claims board and paid into the claimant's estate.
4. Add, to s. 775.05(1), after the word "crime": ",and shall award compensation if the board determines that the claim is one which on equitable principles the state should in good conscience assume and pay".

I hope this is clear; please let me know if you have any questions.

Thank you!

Laura

Laura D. Rose

Deputy Director
Wisconsin Legislative Council
One East Main Street, Suite 401
PO Box 2536
Madison, WI 53701-2536
tel. 608.266.9791
fax. 608.266.3830
laura.rose@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE

-2222-
-3395A/PI



LRB-2082/1

JTH:kjl

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14 PJH

wed 10/9

~~2013 BILL~~

LPS: add
your initials
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(regenerate)
AN ACT ~~to renumber and amend 775.05 (3); to amend 775.05 (4); and to create~~

~~775.05 (3) (b) of the statutes; relating to: the procedure for deciding~~ certain

against the state ~~made by innocent persons who are convicted of crimes~~ *Filed with the claims board and making an*
appropriation

Analysis by the Legislative Reference Bureau

Currently, the claims board is directed to hear claims against the state for compensation by persons who are convicted of and imprisoned for crimes of which they claim to be innocent after their release from imprisonment. After a hearing on a petition, the board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing. The claims board may only award compensation to a petitioner if it finds that the petitioner did not by his or her act or failure to act contribute to or bring about the conviction and imprisonment for which he or she seeks compensation.

This bill provides that a finding of innocence is not substantiated based solely on the fact that a petitioner was found not guilty of the crime of which he or she was convicted. The bill also directs the claims board, before awarding or recommending the payment of compensation to a petitioner, to find that the petitioner has presented clear and convincing evidence that the petitioner did not by his or her act or failure

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to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 775.05 (3) of the statutes is renumbered 775.05 (3) (a) and amended

to read:

775.05 (3) (a) After hearing the evidence on the petition, the claims board shall find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the evidence is not clear and convincing that he or she was innocent. A finding of innocence under this paragraph is not substantiated based solely on the fact that the petitioner was found not guilty of the crime of which he or she was convicted.

SECTION 2. 775.05 (3) (b) of the statutes is created to read:

775.05 (3) (b) After hearing the evidence on the petition, the claims board shall also find that the petitioner ^{either} has presented clear and convincing evidence that the petitioner did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation.

SECTION 3. 775.05 (4) of the statutes is amended to read:

775.05 (4) If, pursuant to sub. (3), the claims board finds that the petitioner was innocent ^{and should be compensated,} and that he or she the claims board finds that the petitioner did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, then the claims board shall find the amount which will equitably compensate the petitioner, not to exceed \$25,000 and at a rate of compensation not greater than \$5,000 per year for the imprisonment. Compensation awarded by the claims board ~~shall~~ may include any amount to which

BILL

1 the board finds the petitioner is entitled for attorney fees, costs and disbursements.
2 If the claims board finds that the amount it is able to award is not an adequate
3 compensation, it shall submit a report specifying an amount which it considers
4 adequate to the chief clerk of each house of the legislature, for distribution to the
5 legislature under s. 13.172 (2).

6 **SECTION 4. Initial applicability.**

7 (1) This act first applies with respect to claims for compensation of innocent
8 persons filed on the effective date of this subsection.

9

(END)

DNote

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FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3322/P1ins
JTK.....

INS 1A:

A

This bill provides, in addition, that the claims board shall award compensation only if the board determines that a petitioner's claim for compensation is one which, on the basis of equitable principles, this state should assume and pay.

INS 2A:

deceased
if

Current law does not specifically address the situation where a petitioner who would have been entitled to receive compensation for wrongful imprisonment dies before the claims board awards compensation. This bill provides that if a petitioner dies before the claims board makes a compensation award, the petitioner's claim for compensation is extinguished with his or her death. However, the bill permits the personal representative or special administrator for the petitioner's estate to petition the board for reimbursement of any costs, disbursements, or reasonable attorney fees incurred by the petitioner in pursuing his or her claim, and the bill provides that if the petitioner qualified to receive an award for wrongful imprisonment but did not receive an award on account of his or her death, the board may pay to the petitioner's estate the amount that the board finds to have been incurred by the petitioner for costs, disbursements, and reasonable attorney fees in connection with his or her petition.

Currently, the decisions of the claims board with respect to compensation of innocent persons who are convicted of a crime, compensation of law enforcement officers who have judgments entered against them for damages resulting from actions taken in the line of duty, and compensation of state employees who incur legal expenses in successfully defending criminal charges of mistreatment of a person in a place of confinement are subject to appeal through the court system in the same manner as administrative decisions of state agencies. If a court finds that a decision of the claims board is outside the range of discretion delegated to the board by law, that a decision of the board is based upon an erroneous interpretation of the law and a correct interpretation would lead to a different result, or that a decision of the board is not supported by substantial evidence, the court may reverse the decision and may remand the matter to the board for further proceedings consistent with its decision. This bill deletes the procedure for judicial review of these decisions of the claims board.

INS 2-1:

x

SECTION 1. 20.505 (4) (d) of the statutes is amended to read:

20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made by the claims board or department of administration under ss. 16.007, 775.05 (2m) and (4), 775.06, and 775.11 and awards made by an act of the legislature arising from a claim filed with the claims board which are not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

History: 1971 c. 108, 125, 215; 1971 c. 270 s. 104; 1973 c. 90 and supp., 157, 305; 1975 c. 39 ss. 179 to 184f, 735 (5); 1975 Ex. Order No. 24; 1975 c. 224, 397; 1977 c. 29; 1977 c. 196 ss. 70, 131; 1977 c. 377 s. 30; 1977 c. 418 s. 929 (1), (55); 1979 c. 32 s. 92 (5); 1979 c. 34, 175, 221; 1979 c. 355 s. 241; 1979 c. 361; 1981 c. 20 ss. 400b to 421, 2202 (57) (b); 1981 c. 44 s. 3; 1981 c. 62, 121; 1981 c. 202 s. 23; 1981 c. 314, 374, 391; 1983 a. 27 ss. 439 to 456, 2202 (1); 1983 a. 36, 187, 282, 371, 393; 1985 a. 29, 31, 57, 120, 296, 297, 332; 1987 a. 27 ss. 296n, 296q, 297b, 297d, 299a to 299r, 300a, 301a, 418 to 432; 1987 a. 142, 147, 342, 399; 1989 a. 31, 56, 107, 122, 336, 339, 345, 366; 1991 a. 39 s. 469, 593q to 614; 1991 a. 105, 269, 315; 1993 a. 16 ss. 470g, 470m, 470r, 488 to 506m; 1993 a. 33, 75, 193, 349, 358, 374, 414, 437, 477, 491; 1995 a. 27, 56, 201, 216, 225, 227, 370, 403; 1997 a. 3; 1997 a. 27 ss. 199, 227 to 229m, 233, 666g to 692, 9456 (3m); 1997 a. 237, 283; 1999 a. 5; 1999 a. 9 ss. 508 to 587d, 9401 (2zt), (2zu); 1999 a. 24, 52, 105, 113, 148, 185; 2001 a. 16 ss. 684d, 685d, 800 to 905; 2001 a. 104 ss. 21, 141; 2001 a. 109; 2003 a. 33 ss. 364d, 365d, 369d, 370d, 374d, 376d, 378d, 380d to 384d, 567 to 615f, 639, 640, 642d to 644, 2811 to 2813; 2003 a. 48 ss. 10, 11; 2003 a. 84; 2003 a. 139 ss. 9 to 12; 2003 a. 206 s. 23; 2003 a. 326; 2005 a. 25 ss. 389 to 429m, 2493, 2494, 2495, 9401, 9409; 2005 a. 60, 124, 141, 142, 253, 344, 414, 433; 2007 a. 20 ss. 323, 326, 516e to 542g, 9121 (6) (a); 2007 a. 226; 2009 a. 11, 28, 302, 318; 2011 a. 29, 32 ss. 406, 421m, 435m to 446m, 716m to 747c, 755, 759 to 766; 2011 a. 166, 260; 2013 a. 20 ss. 215, 216, 379m, 413s to 461; 2013 a. 41.

Insert
from pg. 4

SECTION 2. 775.05 (2) of the statutes is amended to read:

775.05 (2) Any person who is imprisoned as the result of his or her conviction for a crime in any court of this state, of which crime the person claims to be innocent, and who is released from imprisonment for that crime after March 13, 1980, may petition the claims board for compensation for such imprisonment. Upon receipt of the petition, the claims board shall transmit a copy thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced the petitioner for the conviction which is the subject of the claim, or their successors in office, for the information of these persons.

PJH INSERT 2-2

History: 1979 c. 32 s. 53; 1979 c. 126, 176; Stats. 1979 s. 775.05; 1987 a. 186.

INS 2-3:

SECTION 3. 775.05 (2m) of the statutes is created to read:

775.05 (2m) If a person who files a petition under sub. (2) dies before the claims board awards compensation to the person, the person's claim for compensation is extinguished with his or her death. The personal representative or special administrator for the estate of a person whose claim is extinguished under this

subsection may petition the claims board for payment of any costs, disbursements, and reasonable attorney fees incurred by the deceased person in pursuing a claim under sub. (2). If the board determines that the ^{deceased} person qualified for payment of an award under this section but did not receive an award ~~on account of his or her death~~, the board may pay to the petitioner's estate the amount that the board finds to have been incurred by the petitioner for costs, disbursements and reasonable attorney fees in connection with his or her petition.

INS 2-13:

SECTION 4. 775.05 (3) of the statutes is amended to read:

775.05 (3) After hearing the evidence on the petition, the claims board shall find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she suffered imprisonment, or that the evidence is not clear and convincing that he or she was innocent. The claims board shall award compensation to the petitioner if the board determines that the petitioner's claim for compensation is one which, on the basis of equitable principles, the state should in good conscience assume and pay.

History: 1979 c. 32 s. 53; 1979 c. 126, 176; Stats. 1979 s. 775.05; 1987 a. 186.

INS 3-5:

SECTION 5. 775.05 (5) of the statutes is amended to read:

775.05 (5) The claims board shall keep a complete record of its proceedings in each case and of all the evidence. ~~The findings and the award of the claims board shall be subject to review as provided in ch. 227.~~

History: 1979 c. 32 s. 53; 1979 c. 126, 176; Stats. 1979 s. 775.05; 1987 a. 186.

SECTION 6. 775.06 (7) of the statutes is amended to read:

775.06 (7) The claims board shall keep a complete record of its proceedings in each case and of all the evidence. ~~The findings, conclusions, determination and award shall be subject to review as provided in ch. 227.~~

History: 1979 c. 32 s. 53; 1979 c. 34 s. 2102 (1) (c); 1979 c. 176; Stats. 1979 s. 775.06; 1981 c. 20 s. 2202 (1) (b); 1987 a. 186.

SECTION 7. 227.03 (5) of the statutes is amended to read:

227.03 (5) This chapter does not apply to proceedings of the claims board, except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2).

History: 1985 a. 182; 1989 a. 31; 1991 a. 32, 295; 1993 a. 16, 263, 377; 1995 a. 27 ss. 6224 to 6226m, 9130 (4); 1995 a. 77, 227, 351; 1997 a. 3, 191, 237, 283; 1999 a. 82; 2003 a. 33; 2007 a. 1; 2013 a. 20.

move to pg2 of INS 2-1

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FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3322/?ins
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1 INSERT ANALYSIS PJH:

2 (FWS 1B) (NOT) Under the bill, in order to be eligible for compensation, a person must have been wrongfully confined in a prison or county jail facility. A person who is placed on probation or who is subject only to electronic monitoring in his or her home is not eligible for compensation.

3 INSERT PJH:

4 (FWS 2-2) (NOT) In this ~~section~~^{subsection}, "imprisoned" means confined in a prison, as described in s. 302.01, a county jail, a rehabilitation facility established by s. 59.53 (8), a Huber facility under s. 303.09, or a county house of correction under s. 303.16. A person is not imprisoned, for the purposes of this section, if he or she is placed on probation with no period of confinement imposed, or if he or she is confined in a correctional institution under s. 301.046 (1) and the institution is the prisoner's place of residence.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

-3395/P1dn
LRB-3322/P1dn

JTK::f:....

P Sac

- date -

Representative Strachota:

In proposed s. 775.05 (3) (b) of the underlying draft, LRB-2980/1, the draft provided "...the claims board shall also find that the petitioner has presented clear and convincing evidence...". In consultation with the LRB editor, I have changed this language to read "the claims board shall also find that the petitioner *either* has *or* has *not* presented clear and convincing evidence...". The original draft appeared to require the claims board to make a particular finding, whereas I understood that your intent was to require the claims board to find one way or the other. If this change is not consistent with your intent, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3395/P1dn
JTK:sac:rs

October 9, 2013

Representative Strachota:

In proposed s. 775.05 (3) (b) of the underlying draft, LRB-2982/1, the draft provided "...the claims board shall also find that the petitioner has presented clear and convincing evidence...". In consultation with the LRB editor, I have changed this language to read "the claims board shall also find that the petitioner *either has or has not* presented clear and convincing evidence...". The original draft appeared to require the claims board to make a particular finding, whereas I understood that your intent was to require the claims board to find one way or the other. If this change is not consistent with your intent, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

To: Rep.Strachota
Subject: RE: Bies/Hebl: Co-Sponsorship of LRB-2091/2 - Wrongly Convicted Reentry Act

Heather,
Thank you.

Jeff Kuesel

From: Rep.Strachota
Sent: Friday, October 11, 2013 11:33 AM
To: Kuesel, Jeffery
Subject: FW: Bies/Hebl: Co-Sponsorship of LRB-2091/2 - Wrongly Convicted Reentry Act

Heather Moore
Office of Pat Strachota
Office (608) 264-8486
Toll-Free (888) 534-0058

From: Rep.Bies
Sent: Friday, September 27, 2013 9:35 AM
To: *Legislative All Assembly; *Legislative All Senate
Subject: Bies/Hebl: Co-Sponsorship of LRB-2091/2 – Wrongly Convicted Reentry Act

TO: All Legislators

FROM: Representative Garey Bies
Representative Gary Hebl

DATE: September 27, 2013

RE: Co-Sponsorship of LRB-2091/2 – Wrongly Convicted Reentry Act (relating to: resolution of claims against the state for wrongful imprisonment of innocent persons, exempting from taxation certain amounts an individual receives from the claims board or legislature, and making an appropriation.)

Most wrongfully convicted individuals serve decades-long prison sentences and face great hardships upon release. Apart from the horrors of prison life, the wrongfully convicted have few resources to draw upon when set free, and their families have often incurred enormous attorneys' fees related to their cases. While in prison, they miss out on educational opportunities, job training, and career advancement opportunities.

Attached is the story of Robert Lee Stinson. Mr. Stinson spent 23 years in prison for a crime he didn't commit and was awarded only \$25,000 - the maximum amount allowed under current law. Several legislators from both sides of the aisle co-sponsored legislation this session (SB249/AB290) granting Mr. Stinson additional compensation for the years he lost while behind bars.

Wisconsin has not updated its compensation and reentry statutes for wrongfully convicted persons in more than 30 years. As a result, Wisconsin has the most inadequate compensation and reentry statutes for the wrongfully convicted in the entire nation.

Our offices have worked with the Wisconsin Innocence Project in drafting the following legislation to address many of these concerns. (Please see attached memo from the Wisconsin Innocence Project).

The primary provisions of the bill include:

- Increase the maximum compensation of wrongful imprisonment from \$5,000/year and with an overall cap of \$25,000 (the lowest in the nation) to the federal level of \$50,000/year, along with indexing compensation for inflation.
- Reimbursement for attorney and court fees for costs related to defense and postconviction relief.
- Have the Department of Corrections assist with social services when the court mandates immediate release of the wrongly convicted individual.
- Criminal records related to the wrongful conviction are automatically expunged and removed from CCAP.
- To improve timeliness and efficiency, compensation claims would now be heard by the Division of Hearings & Appeals, which will then make a recommendation to the Claims Board.
- Offer transitional financial assistance to cover basic living expenses between being released from prison and receiving an award from the Claims Board.
- Persons who were rightfully imprisoned for other crimes of which they were not innocent that were associated with the same course of conduct that resulted in the conviction of which the person claims to be innocent (i.e.: someone who was convicted of a robbery and an assault but was only guilty of the robbery) are **ineligible** and persons who are convicted of a violent crime after their release from prison are also **ineligible**.

If you would like to cosponsor this bill, please contact Representative Bies's office at 266-5350 or rep.bies@legis.wisconsin.gov or Representative Hebl's office at 266-7678 or rep.heb@legis.wisconsin.gov by **5:00 PM Friday, October 9, 2013.**

A draft copy of this legislation is attached to this email.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-3395/A P2
JTK&PJH:kjf&sac:fs

Mon 10/14

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^(legislate) ~~to renumber and amend 775.05 (3); to amend 20.505 (4) (d), 227.03~~
2 ~~(5), 775.05 (2), 775.05 (4), 775.05 (5) and 775.06 (7); and to create 775.05 (2m)~~
3 ~~and 775.05 (3) (b)~~ of the statutes; **relating to:** the procedure for deciding ^{the} ~~the~~
4 ^{consideration of contractual claims against} certain claims against the state filed with the claims board and making ~~the~~ ^{state}
5 appropriation. ^S

Analysis by the Legislative Reference Bureau

Currently, the claims board is directed to hear claims against the state for compensation by persons who are convicted of and imprisoned for crimes of which they claim to be innocent after their release from imprisonment. After a hearing on a petition, the board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing. The claims board may only award compensation to a petitioner if it finds that the petitioner did not by his or her act or failure to act contribute to or bring about the conviction and imprisonment for which he or she seeks compensation.

This bill provides, in addition, that the claims board shall award compensation only if the board determines that a petitioner's claim for compensation is one which, on the basis of equitable principles, this state should assume and pay. Under the bill, in order to be eligible for compensation, a person must have been wrongfully confined in a prison or county jail facility. A person who is placed on probation or who is subject only to electronic monitoring in his or her home is not eligible for compensation.

~~Not the~~

~~This~~ bill provides that a finding of innocence is not substantiated based solely on the fact that a petitioner was found not guilty of the crime of which he or she was convicted. The bill also directs the claims board, before awarding or recommending the payment of compensation to a petitioner, to find that the petitioner has presented clear and convincing evidence that the petitioner did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation.

Current law does not specifically address the situation where a petitioner who would have been entitled to receive compensation for wrongful imprisonment dies before the claims board awards compensation. This bill provides that if a petitioner dies before the claims board makes a compensation award, the petitioner's claim for compensation is extinguished with his or her death. However, the bill permits the personal representative or special administrator for the petitioner's estate to petition the board for reimbursement of any costs, disbursements, or reasonable attorney fees incurred by the petitioner in pursuing his or her claim, and the bill provides that if the deceased petitioner qualified to receive an award for wrongful imprisonment but did not receive an award, the board may pay to the petitioner's estate the amount that the board finds to have been incurred by the petitioner for costs, disbursements, and reasonable attorney fees in connection with his or her petition.

Currently, the decisions of the claims board with respect to compensation of innocent persons who are convicted of a crime, compensation of law enforcement officers who have judgments entered against them for damages resulting from actions taken in the line of duty, and compensation of state employees who incur legal expenses in successfully defending criminal charges of mistreatment of a person in a place of confinement are subject to appeal through the court system in the same manner as administrative decisions of state agencies. If a court finds that a decision of the claims board is outside the range of discretion delegated to the board by law, that a decision of the board is based upon an erroneous interpretation of the law and a correct interpretation would lead to a different result, or that a decision of the board is not supported by substantial evidence, the court may reverse the decision and may remand the matter to the board for further proceedings consistent with its decision. This bill deletes the procedure for judicial review of these decisions of the claims board.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.505 (4) (d) of the statutes is amended to read:

20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made

by the claims board or department of administration under ss. 16.007, 775.05 (2m)

and (4), 775.06, and 775.11 and awards made by an act of the legislature arising from

awards of financial assistance under
s. 808.085,

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1 a claim filed with the claims board which are not directed by law or under s. 16.007
2 (6m) to be paid from another appropriation.

3 **SECTION 2.** 227.03 (5) of the statutes is amended to read:

4 227.03 (5) This chapter does not apply to proceedings of the claims board,
5 ~~except as provided in ss. 775.05 (5), 775.06 (7) and 775.11 (2).~~

6 **SECTION 3.** 775.05 (2) of the statutes is amended to read:

7 775.05 (2) Any person who is imprisoned as the result of his or her conviction
8 for a crime in any court of this state, of which crime the person claims to be innocent,
9 and who is released from imprisonment for that crime after March 13, 1980, may
10 petition the claims board for compensation for such imprisonment. Upon receipt of
11 the petition, the claims board shall transmit a copy thereof to the prosecutor who
12 prosecuted the petitioner and the judge who sentenced the petitioner for the
13 conviction which is the subject of the claim, or their successors in office, for the
14 information of these persons. In this subsection, "imprisoned" means confined in a
15 prison, as described in s. 302.01, a county jail, a rehabilitation facility established by
16 s. 59.53 (8), a Huber facility under s. 303.09, or a county house of correction under
17 s. 303.16. A person is not imprisoned, for the purposes of this section, if he or she is
18 placed on probation with no period of confinement imposed, or if he or she is confined
19 in a correctional institution under s. 301.046 (1) and the institution is the prisoner's
20 place of residence.

21 **SECTION 4.** 775.05 (2m) of the statutes is created to read:

22 775.05 (2m) If a person who files a petition under sub. (2) dies before the claims
23 board awards compensation to the person, the person's claim for compensation is
24 extinguished with his or her death. The personal representative or special
25 administrator for the estate of a person whose claim is extinguished under this

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1 subsection may petition the claims board for payment of any costs, disbursements,
2 and reasonable attorney fees incurred by the deceased person in pursuing a claim
3 under sub. (2). If the board determines that the deceased person qualified for
4 payment of an award under this section but did not receive an award, the board may
5 pay to the petitioner's estate the amount that the board finds to have been incurred
6 by the petitioner for costs, disbursements and reasonable attorney fees in connection
7 with his or her petition.

8 **SECTION 5.** 775.05 (3) of the statutes is renumbered 775.05 (3) (a) and amended
9 to read:

10 775.05 (3) (a) After hearing the evidence on the petition, the claims board shall
11 find either that the evidence is clear and convincing that the petitioner was innocent
12 of the crime for which he or she suffered imprisonment, or that the evidence is not
13 clear and convincing that he or she was innocent. A finding of innocence under this
14 paragraph is not substantiated based solely on the fact that the petitioner was found
15 not guilty of the crime of which he or she was convicted. The claims board shall award
16 compensation to the petitioner if the board determines that the petitioner's claim for
17 compensation is one which, on the basis of equitable principles, the state should in
18 good conscience assume and pay.

19 **SECTION 6.** 775.05 (3) (b) of the statutes is created to read:

20 775.05 (3) (b) After hearing the evidence on the petition, the claims board shall
21 also find that the petitioner either has or has not presented clear and convincing
22 evidence that the petitioner did not by his or her act or failure to act contribute to
23 bring about the conviction and imprisonment for which he or she seeks
24 compensation.

25 **SECTION 7.** 775.05 (4) of the statutes is amended to read:

The claims board⁵ shall subtract
any moneys received by the petitioner
under s. 808.085.

1 775.05 (4) If, pursuant to sub. (3), the claims board finds that the petitioner was
2 innocent and should be compensated, and ~~that he or she~~ the claims board finds that
3 the petitioner did not by his or her act or failure to act contribute to bring about the
4 conviction and imprisonment for which he or she seeks compensation, then the
5 claims board shall find the amount which will equitably compensate the petitioner,
6 not to exceed ~~\$25,000~~ ^{\$100,000} and at a rate of compensation not greater than ~~\$5,000~~ ^{\$10,000} per year
7 for the imprisonment. Compensation awarded by the claims board ~~shall~~ may include
8 any amount to which the board finds the petitioner is entitled for attorney fees, costs
9 and disbursements. If the claims board finds that the amount it is able to award is
10 not an adequate compensation, it shall submit a report specifying an amount which
11 it considers adequate to the chief clerk of each house of the legislature, for
12 distribution to the legislature under s. 13.172 (2).

13 SECTION 8. 775.05¹ (5) of the statutes is amended to read:

14 775.05 (5) The claims board shall keep a complete record of its proceedings in
15 each case and of all the evidence. ~~The findings and the award of the claims board~~
16 ~~shall be subject to review as provided in ch. 227.~~

17 SECTION 9. 775.06¹ (7) of the statutes is amended to read:

18 775.06 (7) The claims board shall keep a complete record of its proceedings in
19 each case and of all the evidence. ~~The findings, conclusions, determination and~~
20 ~~award shall be subject to review as provided in ch. 227.~~

21 SECTION 10. Initial applicability.

22 (1) This act first applies with respect to claims for compensation of innocent
23 persons filed on the effective date of this subsection.

24 (END)

Insert PJH 520

BILL

The bill also provides that, with certain exceptions, a surviving spouse or domestic partner, child, parent, or sibling of a person who is entitled to compensation for wrongful imprisonment but who does not receive payment of an award may, within one year of the death of that person, file or pursue on behalf of the deceased person a claim for wrongful imprisonment. Under the bill, any payment that would have been payable to the deceased person then becomes payable to the individual who files or pursues the claim, except that if that person is only entitled under the law governing inheritances to inherit a portion of the estate of a deceased person, the individual may only receive the same portion of the payment. Any compensation is independent of any rights that a claimant or any other person may have to inherit assets under any will of the decedent.

Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect, for up to ten years, health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2015. Under the bill, these individuals would be required to pay the same health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state. During the time before January 1, 2015, this bill makes these individuals eligible for health care benefits through the Medical Assistance program BadgerCare Plus, if the federal government does not disapprove of the Department of Health Services providing Medical Assistance to these individuals.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC) and local aid agencies, and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

The bill also exempts from taxation the payments that an individual, or his or her estate, receives from the claims board, or from the state legislature as a result of claims board action.

The bill initially applies with respect to claims filed by persons who are released on or after January 1, 1990, from imprisonment for crimes of which they claim to be innocent.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

RH
analysis inset

BILL**SECTION 7**

1 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
2 s. 775.05.

3 **SECTION 8.** 227.43 (1) (bw) of the statutes is created to read:

4 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
5 conducted under s. 775.05.

6 **SECTION 9.** 301.051 of the statutes is created to read:

7 **301.051 Wrongful conviction; transition plan.** Not more than 5 days after
8 a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a),
9 the department shall create a transition to release plan for the inmate. The plan shall
10 do all of the following:

11 (1) Provide the inmate with a written list of community resources available to
12 the inmate upon his or her release from prison, including temporary housing and
13 emergency shelters, food banks, education and job assistance, and health care
14 services in the county into which the inmate will be released. The department shall
15 maintain up-to-date lists with contact information for each county in the state.

16 (2) Provide the inmate with an individual counseling session with a person
17 trained by the department or the county into which the inmate will be released to
18 assist inmates in the transition to release from prison.

19 (3) Schedule an appointment, set for not later than 2 weeks after the inmate's
20 date of release, for the inmate to meet with a social worker or aid program
21 administrator for the county into which the inmate will be released.

22 **SECTION 10.** 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and
23 amended to read:

24 775.05 (2) (a) Any Except as provided in pars. (b) and (c), any person who is
25 imprisoned as the result of his or her conviction for a crime in any court of this state,

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BILL

SECTION #. 808.085 of the statutes is created to read:
808.085 Wrongful conviction; relief. (1) If a court acts under s. 808.08 to

release a person from confinement in a prison, the person may petition the court for any or all of the following:

(a) A court order directing the department of corrections to create a transition to release plan.

(b) A financial assistance award not to exceed 133 percent of the federal poverty level for up to 14 months, or while proceedings under s. 775.05 are pending, whichever is shorter.

(c) Sealing of all records related to the case. Records sealed under this section shall be accessible to the person but may not be available for public inspection or through the consolidated court automation program case management system.

(2) The court shall, within 10 days after it receives the petition under sub. (1), grant the relief sought if the person's criminal conviction was reversed, set aside, or vacated for reasons not inconsistent with the person's innocence of the crime for which he or she was convicted.

(3) If a person who is granted relief under this section is subsequently convicted of the same charges for which he or she was granted relief, or if his or her conviction is reinstated, the person shall repay any financial assistance award granted under this section and all records related to the case shall be unsealed.

(4) To the extent it is not contrary to or inconsistent with federal law, financial assistance a person receives pursuant to this section may not be included as income for the purpose of determining whether the person is indigent under rules promulgated under ch. 977 or for the purpose of determining the person's eligibility for any program for which the department of health services or the department of children and families provides services, benefits, or other assistance under ch. 49.

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3395/2ins
JTK.....

INS 2A:

* ¶ Currently, the maximum amount that the claims board may award to a petitioner is \$5,000 for each year of imprisonment, not to exceed a total of \$25,000. This bill increases the maximum to ~~20~~10,000 for each year of imprisonment, not to exceed a total of \$100,000. \$

INS 2B:

¶ Currently, if a party enters into a contract with a state agency or authority, the party may pursue a claim against the agency or authority under the contract in a court of law, notwithstanding the sovereign immunity of this state, provided that the party first files its claim for the consideration of the claims board and the legislature refuses to allow the claim. This bill provides that whenever a party enters into a contract with a state agency or authority, the party may directly commence an action against the agency or authority under the contract without consideration of the claim by the claims board or the legislature, subject to the relevant provisions of the contract.

INS 2-1:

x
SECTION 1. 16.007 (6s) of the statutes is created to read:

16.007 (6s) CONTRACTUAL DISPUTES. Whenever a party to a contract with an agency, as defined in s. 16.70 (1e), or an authority, as defined in s. 16.70 (2), has a claim against the agency or authority under the contract, the department shall not refer the claim to the claims board. The party may directly commence an action against the agency or authority under the contract without consideration of the claim by the claims board or the legislature, subject to the relevant provisions of the contract.

INS 3-5:

*

SECTION 2. 775.01 of the statutes is amended to read:

775.01 Actions against state; bond. ~~Upon~~ Except as provided in s. 16.007
(6s), upon the refusal of the legislature to allow a claim against the state the claimant may commence an action against the state by service as provided in s. 801.11 (3) and by filing with the clerk of court a bond, not exceeding \$1,000, with 2 or more sureties, to be approved by the attorney general, to the effect that the claimant will indemnify the state against all costs that may accrue in such action and pay to the clerk of court all costs, in case the claimant fails to obtain judgment against the state.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 s. 53; Stats. 1979 s. 775.01.